

Minutes of the Regular Public Art Commission Meeting
Wednesday, February 13, 2008
Conference Room 360, City Hall

CONVENE: 7:05 p.m.

1. ROLL CALL: Chair Huston, Vice-Chair Lee, Commissioners Rosenberg and Wolfe

STAFF PRESENT: Jon Biggs, Planning Services Manager; Tony Ebster, Recording Secretary

2. MINUTES: Minutes for the meeting of October 25, 2007
Approved with changes, all in favor

Minutes of November 29, 2007
Approved with changes, all in favor

3. ORAL COMMUNICATION:

Mr. John Sanchez was interested in what the Commission does.

It was suggested that the agenda be rearranged and the ordinance discussion be last because it would be better understood after discussing the other topics first.

4. REGULAR AGENDA:

4-A. (Formerly 4-E) Public Art Commission Administration and Enforcement

Ms. Huston and Ms. Lee reported on their meeting with the Mayor. The three main points were:

1. Using the public art funds for the grants was in competition with the public arts use. 2. The public art commission is independent, not under control of the planning department and 3. That they are advisory, not an action commission.

Mr. Wolfe stated that as soon as a project becomes official, the Public Art Commission should be notified.

Ms. Huston asked for a list of all projects operating under a temporary certificate of occupancy.

Ms. Huston mentioned that people are going directly to City Council and asking to bypass the process. She wants to know where they are letting this happen.

Ms. Rosenberg said that it's the Mayor and planning's right to bypass the process but does an injustice to the public art enrichment and enjoyment.

Mr. Wolfe mentioned that developers have dealt with enough commissions and do not want to deal with another one.

Ms. Lee asked if there should be more of a connection between what their obligation is and what the check was.

Ms. Huston mentioned enforcement and accountability. They feel that they are not succeeding. They want to find out why this is happening. Once they get it documented, they can amend the ordinance. She mentioned having fewer meetings and spending more money on public art. Its about finding the money and projects.

Ms. Rosenberg said that the reason they are not seeing the projects is because they have not been approved.

Ms. Huston mentioned Bay Ship and Yacht and that they had a lawsuit with the City and their application was lost. They had been exempted from the art requirement. She wants to talk about changing the ordinance. She said that Ms. Woodbury had some changes because when a developer submits proposals to the commission, they are often operating under temporary certificates of occupancy. It's too late in the process. Ms. Huston expressed concern with the design.

Mr. Wolfe mentioned talking with the City attorney

Ms. Rosenberg wants a timeline for how planning works.

Ms. Huston asked what in ordinance allows developers to get a temporary certificate of occupancy before fulfilling the public art requirement. She asked if staff could ask Ms. Woodbury about having a discussion about this issue. How do they fix that problem? She brought up enforcement and said that she could only speak to Bridgeside. She explained what happened. The Mayor said that it is not enforceable. She suggested making them pay in-lieu fees.

Mr. Wolfe wants a time frame regarding Bridgeside noncompliance and their discussion with the attorney and Ms. Woodbury's response to their inquiry.

Mr. Biggs reminded the commission that they are a quasi-judicial body and to exercise caution with enforcement, especially with individuals. Applicants are entitled to due process. He suggested that the proper way to enforce non-compliance is to inform staff of deficiencies. It is staff's obligation to make sure the applicant is in compliance.

Ms. Rosenberg mentioned the efficacy of their program.

Ms. Huston said that Bridgeside is an example and should be used as an example of how to enforce. They have no means by which they can inform them. She feels that they are doing a good job on many levels. But they need an open policy so they can respond to all the projects on an ongoing basis.

Mr. Wolfe mentioned that there are no medallions at Alameda Towne Centre.

Ms. Huston said that the request for information is an on-going one and what she would like to do is incorporate the stream of information so that they have a record of all projects and wants to track where the money is going.

Ms. Rosenberg suggested creating a checklist for the applicant so they can see what is checked off to make sure the progress is documented for enforcement.

Mr. Biggs responded by saying that the best way to achieve these things is to make sure certain conditions of approval are complied with at key steps in the process.

Ms. Lee said that she feels that the commission is nipping at the heels of the developers.

Ms. Rosenberg pointed out that temporary certificates of occupancy come really easily and can go for a long time.

Mr. Biggs mentioned having checkpoints in the process.

Ms. Huston said that what happens in the application process is that planning gets the application and decides if it is ok. Bridgeside was ok with planning but has never been ok with the commission.

Ms. Rosenberg felt that there are generalizations that are detrimental to the process. She thinks that planning does not understand what the commission's requests are.

Ms. Huston mentioned two aspects, infrastructure and art-based. It's about the review process. They need to trust staff. Is the space going to work for its intended purposes? She said that staff might not be qualified to judge artwork; the commission may need to take part. There are going to be two parts of the review process, an art commission part and a planning part.

Mr. Biggs said that what they are working towards is reviewing it together.

Ms. Huston wanted an outline that has a timeline of completion.

Ms. Rosenberg said that she doesn't want a timeline because sometimes projects can be delayed.

Mr. Biggs said that they would not look at a project after it goes in because it has been approved. It is staff that makes sure the project is done according to the plans.

Ms. Rosenberg asked if there was a way to make sure that staff sees the details.

Mr. Biggs said that they are working on a system that notifies the inspector and he verifies that certain things are in place or contacts the planner to verify.

Ms. Huston said that enforcement is not the commission's business.

Mr. Biggs reiterated that they are not an enforcement body. He said that if the commission notices something that wasn't done correctly, they need to notify staff.

Ms. Rosenberg mentioned that creating an assessment process that helps advise planning would be helpful.

Ms. Lee clarified by saying that the commission should have systematic review everything that is being done.

Mr. Biggs clarified that his suggestion wasn't for them to go out and look to verify approvals; it should be used as guidance for reviewing future projects.

Ms. Rosenberg said that whatever makes things work more smoothly will help them be a more successful commission.

Mr. Biggs said that there are too many projects and levels of review.

Mr. Wolfe said they need to be careful when they review projects and asked if they see the recommendation before City Council sees it.

Ms. Rosenberg said that they review the recommendation.

Ms. Huston said that they get sent out before the commission sees it. She mentioned that it is a problem with the ordinance. She said that staff sends their recommendation to the applicant and Council before the commission sees it.

Mr. Wolfe said that an applicant comes in, the commission reviews their application and comments, then staff makes a written comment or recommendation then it goes to City Council.

Ms. Lee said that they review all the components.

Mr. Biggs expressed some confusion and tried to explain his understanding of the process.

Ms. Huston suggested talking about it under its topic.

4-B. (Formerly 4-D) Public Art Fund

Ms. Huston asked about it because it is the first part of finding out where the money is going. She questioned the amount in the public art fund.

Mr. Biggs clarified by saying that the commission should find out which projects have paid an in-lieu fee, the amount of money and the running balance.

Ms. Rosenberg asked if there were plans for the money. Do they have expenses? She suggested putting it on the agenda to discuss if there is a use for the money.

Mr. Wolfe asked if they should look at a physical plan of where potential sites would be.

Ms. Lee suggested a systematic plan for artist selection and how they would advertise.

Mr. Wolfe asked if it was appropriate to use some of the money to hire a consultant to help with the plan, to look at sites and the process, and engage artists in the arts program.

Ms. Lee mentioned that the revamping the City's website should include an art section.

Ms. Rosenberg recalled a discussion that talked about creating a project when they had enough money. They would ask for artists submittals, public opinion and develop a request.

Ms. Lee wants a procedure in place before spending any money.

Ms. Huston said that there is a brief outline regarding how they could spend the money. She asked about agendaizing a discussion the purchase of public art.

Ms. Huston "The expenditure of funds towards the placement of public art"

Mr. Biggs reminded the commission that the City Council has to approve any expenditure of funds towards public art and that the commission should develop a recommendation.

Ms. Huston mentioned some of the steps they have so far. Calling for public input, finding a site, and research and place art. She suggested keeping in mind that they will be expending money and to consider the ordinance.

4-C. (Formerly 4-B) Validity of Performance Arts as Fulfilling Public Art Requirements.

Ms. Huston feels that it is difficult to enforce performance spaces for fulfillment of the art requirement and questions eliminating it from the ordinance.

Ms. Lee suggested that the next projects be tangible things to see.

Ms. Rosenberg said that they don't have enough experience dealing with that and feels that the cap hinders the ability to provide a quality performance space.

Ms. Huston said that they are all feeling the same on the performance aspect and should approach future projects with caution in the future.

Mr. Wolfe has an issue with respect to diversity. He mentioned that there have been two other performance spaces that have come to the commission and wonders how many more they need. He thinks that a quota may be helpful in limiting how many developers ask for a performance space as the public art requirement.

Mr. Biggs responded by saying that it is ultimately up to the commission. They have the discretion to approve or deny a project.

Ms. Rosenberg suggested a moratorium or a hold on a project until they determine if it is feasible.

Mr. Biggs does not want to see the door closed on what may be coming down the line. Even if they propose eliminating performance art from the ordinance, the City Council may still like to see it retained as an option.

Ms. Huston stated that the commission has approved two events-based projects out of five and will be reluctant to approve more in the future.

Mr. Wolfe agreed with Ms. Huston and added that the intent is to create a diverse collection of art and performances and suggested that for the next year, they would prefer to approve non-performance based public art.

Mr. Biggs suggested following the agenda topic more specifically.

There was a motion to recognize that performance art can satisfy public art requirements; however, they would be concerned about approving future performance art proposals given the number that have already been approved and their desire to see a more diverse mix of public art.

All were in favor.

4-D. (Formerly 4-A) Public Art Ordinance

Ms. Huston read from the report and liked the ideas.

Mr. Wolfe said that he and Ms. Lee looked over the ordinance and looked at other surrounding communities' ordinances and what they say about public art contributions.

Ms. Lee brought up the discussion she had in the subcommittee and that they wanted to eliminate the cap. They thought that it might be politically unfeasible to eliminate the cap but raising it might be an option.

Ms. Huston brought up her meeting with the mayor and people from City Council. Three issues came up in the meeting; first was eliminating the cap, second was creating explicit language that would require space developments to contribute 1% for each space and the third was reviewing which residential projects are eligible for contribution and considering expanding the scope.

Ms. Rosenberg didn't want to put the burden of public art on developers who were building less than five units but anything more than that they should be subject to the requirements.

Ms. Huston wanted to look at the list of every project over \$250,000 to see what kinds of developments are happening. She asked if it is something that should go to the City Attorney to see if they can add or change the language of the ordinance to deal with phased development.

Mr. Biggs clarified that phased projects were larger developments.

Mr. Wolfe pointed out that neither San Francisco nor Oakland has a cap or a private contribution requirement.

Ms. Huston's thought on eliminating the cap is that they are the advocates in the system and that they should let the people who have a better understanding for the business side deal with it but the commission recommends eliminating the cap. They would also welcome Ms. Woodbury's input on the timing and any thoughts she would have that would facilitate the improvement of the ordinance.

Mr. Biggs recommended asking staff to draft an ordinance that would incorporate the changes being discussed.

Ms. Lee read from the ordinance and pointed out that no more than 25% of the art fund was to be used for administrative costs.

Ms. Huston pointed out that the commission doesn't know what is happening. She is arguing that accountability is an issue.

Mr. Wolfe said that Oakland's percentage is 36%.

Mr. Biggs clarified that the 25% of the fund covers everything from administrative costs to having the lights on. It is for overall operating costs.

Ms. Huston read from the ordinance regarding the submission of applications.

Mr. Biggs clarified that the applicant is always included in the loop of communication regarding their application and recommendations.

Ms. Rosenberg brought up that they are not entirely clear on the process of inspecting and the progression of the project and the criteria that ensures diversity.

Mr. Biggs clarified that the planning department is involved in all aspects of the process and that there is a set of guidelines.

Ms. Huston asked if there was anything else in the ordinance that was working against them. The commission agreed that the cap was the main issue.

Ms. Huston mentioned the money in the art fund. She also read from the ordinance about the requirement of art being on the actual site. She said that they have a new set of problems regarding the in-lieu fee.

Mr. Biggs asked if they wanted to include a motion to include the recommended changes to the ordinance.

By consensus, the Commission asked staff to draft an ordinance that included the discussed changes and agendaize for the next meeting.

4-E. (Formerly 4-C) Discussion of the 2007-2009 Public Art Plan

Ms. Huston wanted to eliminate item three and they are working on item two of the attached chart. She wanted to propose to Council the expenditure of the in-lieu fund to public art. She asked if the money taken for administrative costs was taken when the money first comes in.

Ms. Rosenberg suggested putting no numbers on it until the accountability issue is resolved.

Mr. Wolfe clarified the proposal by saying that it is about the expenditure of in-lieu funds.

Ms. Lee asked about spending money on consultants and if that is part of the 25% of the administrative costs.

Ms. Huston said that the annual plan is ok and doesn't need to be detailed.

Ms. Rosenberg stated that the creation and maintenance of a web resource keeps coming up in their conversations as a high priority.

Ms. Huston looked at the chart and the order of the items.

The commission discussed the items on the chart for the public art plan, reprioritized and talked about eliminating some of the items that were not priorities.

4-F. Set Date for Next Meeting

The commission set March 12, 2008 as the next meeting of the Public Art Commission.

5. STAFF COMMUNICATIONS:

Mr. Biggs said that planning staff had visited the Bridgeside shopping center and confirmed that the amphitheater was not in compliance and was not graded to the approved plans. Staff is working with the developer to bring them into compliance.

6. WRITTEN COMMUNICATIONS:

None

7. COMMISSIONER COMMUNICATIONS:

Ms. Huston resigned as the Chair of the Public Art Commission.

6. ADJOURNMENT: The meeting adjourned at 9:07 pm.

Respectfully submitted,

Jon Biggs, Secretary
Public Art Commission